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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,372	08/01/2003	John W. Cargile	D-3126	4165
7590	01/04/2006		EXAMINER	
MeadWestvaco Corporation Law Department 4850-D North Church Lane Smyrna, GA 30080			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 01/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/632,372	CARGILE, JOHN W.
	Examiner	Art Unit
	Gary E. Elkins	3727

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,2,5 and 7-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,5 and 7-23 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 13, 14, 18 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 1 of each of claims 13 and 14, “separable” is unclear with respect to what is being claimed. If a trough that has already been separated is claimed, then the trough is no longer capable of such action. If a trough that is still connected is being claimed, then lines 1 and 2 of claim 1 are unclear.

In claim 18, “said fold line” lacks antecedent basis in the claims. For the purpose of applying the prior art, it is assumed that claim 17 is the intended dependency since claim 17 first introduces the fold line. However, correction is required.

Claim 23 is unclear with respect to what the trough is formed further from, i.e. “formed further from said top and side panels” than what?

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 5, 12, and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates et al '172. Bates et al '172 discloses a carton including a seam 54, 56, a displaceable portion 100 and an opening assist formed by a push tab 90, 92 capable of allowing one to insert a finger, hingedly bend the tab into the container and pull the displaceable portion outwardly. The push tab is formed from the displaceable portion in the closed carton and forms a recess insofar as claimed.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

4. Claims 1, 5, 7, 10, 12, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Holley, Jr. Holley, Jr. discloses a seam formed between the end flaps 42, 44, a displaceable portion 82 formed and an opening assist formed by tab 83. Movement of the tab 83 inwardly is considered to produce a recess adjacent edges 84, 86 as claimed. It is noted that no distinction is seen between the claimed push tab and the tab 83 as a result of the intended use of the tab to be used as an opening assist, i.e. the tab 83 of Holley, Jr. is considered capable of being pushed to separate the displaceable portion. With respect to claim 5, no distinction is seen between the carton structure claimed and that shown in Holley, Jr. as a result of the claimed intended manner of separating the displaceable portion from the carton, i.e. one can tear the segment of the

frangible line at the distal end of the tab 83 prior to tearing the remaining portions of the frangible line. With respect to claims 7 and 16, note is made that the tab 83 is formed of paperboard and is therefor hinged to the remaining portions of the displaceable portion.

5. Claims 13 and 14, as best understood in view of paragraph 1 above, are rejected under 35 U.S.C. 102(a) as being anticipated by Spivey. Spivey discloses a trough formed from an end area of a carton and including a push tab 82 formed by overlapping panels 12, 28 forming the end area of the carton as claimed. The end or end area in Spivey is considered to be formed by a plurality of panels insofar as claimed.

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5, 7-12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spivey in view of Harrelson. Spivey discloses all structure of the claimed carton except formation of the push tab such that a recess is defined in the displaceable portion when the tab is pushed. Harrelson teaches that it is known to make a push tab 60 within the body of a displaceable portion 59 such that a recess or indent is formed in the displaceable portion when the tab is pushed inwardly, i.e. pushing the tab inwardly results in an opening or recess formed from a portion of the displaceable portion. It would have been obvious to make the push tab in Spivey as taught by Harrelson to allow easier tearing of the end of the displaceable portion, i.e. tearing along straight angled tear lines is easier than tear lines perpendicular to the pulling

direction. It is noted that the distal end of the tab is considered to be displaced from the foldline in either Spivey or Harrelson.

8. Claims 1, 2, 5-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Killy in view of Holley, Jr. Killy discloses all structure of the claimed carton except formation of the opening assist (54, 56) push tab along an overlapping seam formed by the end of the carton. Holley, Jr. teaches that it is known to make the opening assist on a displaceable portion at the end of a carton along the seam formed between two overlapping end flaps. It would have been obvious to make the end flaps 30, 32 in Killy as overlapping end flaps as taught by Holley, Jr. to provide a stronger continuous push tab and to allow better sealing of the flaps at the end of the carton. With respect to claims 13 and 14, note is made that the trough 50 in Killy is capable of being separated as claimed. With respect to claims 21 and 22, note is made that the displaceable portion in Killy is considered a trough insofar as claimed.

***Response to Arguments***

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

10. The withdrawal of the indicated allowability of claims 13 and 14 in view of the above rejections is regretted.

11. Claim 23, as best understood in view of paragraph 1 above, would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

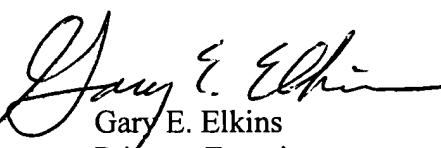
***Conclusion***

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.



Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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23 December 2005